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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,999	12/07/2001	George M. Vais	VAIG101	9222

7590 12/26/2002  
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BOISE, ID 83701-0877

EXAMINER

CHAMBERS, TROY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/004,999

Applicant(s)

VAIS, GEORGE M.

Examiner

Troy Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 463 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 9, 10, 13 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10, 13 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ..

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-3, 9, 10, 13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has amended the claims to add the limitation "said body configured so that said first elongated opening is nearest said first end." However, it is unclear how the applicant defines nearest. Is the first elongated opening nearest to the first end as compared to the other elongated openings, non-elongated openings or to other features of the muzzle brake? The applicant argues that the amendment to the claims overcomes the prior art of record because holes that are "near" the first end and not elongated are excluded. However, there are other holes located on the prior art devices that are farther from the first end as compared to the elongated openings and, therefore, anticipate applicant's claims.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 3 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Design D285238 issued to Cellini. Cellini discloses a muzzle brake comprising a cylindrical body having a central bore, at least one opening having a

longitudinal dimension greater than a lateral dimension, and, a plurality of gas holes linearly disposed along a longitudinal axis of the body.

3. Claims 1, 2, 3 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4967642 issued to Mihaita. Mihaita discloses a muzzle brake comprising a cylindrical body 200 having a central bore, at least one opening 212 having a longitudinal dimension greater than a lateral dimension, and, a plurality of gas holes 210 linearly disposed along a longitudinal axis of the body.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Cellini or Mihaita in view of U.S. Patent No. 5305677 issued to Kleinguenther. Cellini or Mihaita disclose a muzzle brake as described above. But, neither Cellini nor Mihaita discloses the at least one opening as claimed by the applicant. However, Kleinguenther discloses such an opening. Specifically, Kleinguenther discloses a muzzle brake comprising a cylindrical body of predetermined length having a plurality of exhaust ports 9 formed by the intersection of multiple radial holes (col. 3, ll. 31-33 to col. 4, ll. 1-4). At the time of the invention, one of ordinary skill in the art would have found it obvious to form a longitudinal slot with the intersection of

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multiple radial holes as disclosed by Kleinguenther. The suggestion/motivation for doing so would have been to form a slot by drilling as opposed to milling.

### ***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Cellini, Buss, Hull, Cyktich, Seberger, Dabrowski, Shapel, Lance, Bartolles, Mazzanti, Kristandt, Hillman, Tocco, Robyler, Leffel, A'Costa and Kholodovsky are cited as of interest to show similar muzzle brakes.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (703) 308-

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5870. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-7687.

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600